IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.775 OF 1989

The State of Maharashtra through
the Collector of Sangli ...Appellant

vs.

1. Babu Tayappa Todkar
2.Tatoba Balu Todkar ...Respondents

Ms Geeta Mulekar A.G.P. for State
Mr.Tejpal Ingale for Respondents Nos.1 and 2.

CORAM: A.S.OKA,J.
DATE : DECEMBER 3,2007.

ORAL JUDGMENT:

1. Heard learned A.G.P. for the Appellant and Shri Ingale for the Respondents. By this Appeal, the Appellant has challenged the Judgment and Award dated 7th April 1988 passed by the learned Civil Judge (Senior Division), Sangli in a reference under section 18 of the Land Acquisition Act,1894 (hereinafter referred to as the said Act).

2. The land subject matter of the acquisition is an area of 83 R out of R.S.No.873/2A and 51 R out of R.S No.873/2B situated at Miraj, District Sangli and the same was acquired for Central Warehouse by the Government. A notification dated 25th May 1978 under section 4 of the said Act was issued by which the said lands were notified for the acquisition. The Award under section 11 of the said Act was made on 18th December 1981. The Special Land Acquisition Officer awarded the market value at the rate of Rs.20,500/- per Hectare for the land bearing no.R.S.873/2-A and Rs.17,000/- per Hectare

for the land bearing R.S.No. 873/2B. By the impugned Judgment and Award, the Reference Court came to the conclusion that the market value at the flat rate of Rs.40,000/- per Hectare will have to be fixed for both the lands. The learned Reference Court awarded the statutory benefits under section 23(1-A),23(2)and 28 of the said Act.

3. The submission of the learned A.G.P. is that considering the evidence on record, the market value fixed by the Reference court is on the higher side. The learned A.G.P. submitted that in any event, benefit under section 23(1-A) could not have been granted to the Respondents. The learned Advocate for the Respondents supported the impugned Judgment and Award.

4. I have carefully considered the submissions. I have perused the impugned Judgment and notes of evidence.

5. The Respondents-claimants examined the first Respondent who deposed about the location of the acquired land and infrastructure available to the acquired land. He has stated that both the lands were Bagayat lands and water from the well was available. He stated that the water supply from a water supply scheme was also available to the acquired land. He has stated that the acquired lands were situated within the limits of Miraj Municipal Council. He stated that the Miraj Dhamani old road passes from the distance of one and half furlong on

southern side of the acquired land. The Reference court has referred to various sale instances relied upon by the Respondents in the form of Judgments and Awards in references under section 18 of the said Act. The learned Trial Judge has referred to a certified copy of the Judgment in L.A.R.No.17 of 1970 as well as Judgment in L.A.R.No.13 of 1982. In the L.A.R.No. 13/1982 the market value of Rs.37,500/- per Hectare was fixed. Same is the case with the Judgment in L.A.R.No.22 of 1971. The Reference Court has referred to sale deed dated 12th December 1972 in respect of a similarly situated land where market value was fixed at Rs.50,000/- per Hectare. After considering the sale deed as well as other sale instances, the reference court found that the price determined in the privious proceedings was ranging from Rs.20,000/- per Hectare to Rs.75,000/-per Hectare. The learned Reference Court also relied upon the Judgment in L.A.R.No.25/82 and has fixed the market value at the rate of Rs.40,000/- per Hectare. The Apex Court has held that while deciding the market value of the acquired land, there is bound to be some element of guess work. Considering the evidence of the first Respondent and the sale instances produced by the Respondents, the market value fixed at the rate of Rs.40,000/- per Hectare is just and proper and no interference is called for.

6. The Award under section 11 of the said Act in the present case was made on 18th December 1981 i.e. prior to 30th April 1982 i.e.the date on which the bill of the Land Acquisition

(Amendment) Act,1894 was placed before the Parliament. In view of the settled legal position, as the Award under section 11 of the said Act is made prior to 30th April 1982, the Respondents will not be entitled to interest under section 23 (1-A) of the said Act. The Respondents will be entitled to interest if any, under the unamended provisions of the said Act. However, as the reference was pending on the date on which the amendment Act was brought into force, the Respondents will be entitled to benefits of section 23(2) and section 28 of the said Act. Therefore, the Award made by the trial court is confirmed with the modification to the aforesaid extent.

7. Hence, I pass the following order :

i) Market value awarded by the trial court is confirmed.

ii) However, as the Respondents are not entitled to interest under section 23 (1-A) of the said Act, the impugned Judgment and Award dated 7th February 1988 is modified to that extent. The Reference Court will calculate the amount payable to the Respondents under the modified Award within a period of four months from the date of receipt of the writ of this order.

iii) The Appeal is partly allowed in above terms. There will be no order as to costs.

iv) Writ to be sent immediately.

JUDGE